

DEFERRED DEPOSIT LENDING AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to address operational requirements related to deferred deposit lending.

Highlighted Provisions:

This bill:

- ▶ addresses required information in annual operation statements;
- ▶ changes the permissible length of rollovers to 10 weeks;
- ▶ imposes restrictions related to communications at a placement of employment;
- ▶ provides for an extended payment plan option; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

7-23-201, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and amended by Laws of Utah 2008, Chapter 96

7-23-401, as renumbered and amended by Laws of Utah 2008, Chapter 96

15-1-4, as last amended by Laws of Utah 2008, Chapter 96

ENACTS:

7-23-403, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **7-23-201** is amended to read:

7-23-201. Registration -- Rulemaking.

(1) (a) It is unlawful for a person to engage in the business of cashing checks or the

business of deferred deposit lending in Utah or with a Utah resident unless the person:

(i) registers with the department in accordance with this chapter; and

(ii) maintains a valid registration.

(b) It is unlawful for a person to operate a mobile facility in this state to engage in the business of:

(i) cashing checks; or

(ii) deferred deposit lending.

(2) (a) A registration and a renewal of a registration expires on April 30 of each year unless on or before that date the person renews the registration.

(b) To register under this section, a person shall:

(i) pay an original registration fee established under Subsection 7-1-401(8); and

(ii) submit a registration statement containing the information described in Subsection (2)(d).

(c) To renew a registration under this section, a person shall:

(i) pay the annual fee established under Subsection 7-1-401(5);

(ii) submit a renewal statement containing the information described in Subsection (2)(d); and

(iii) if the person engages in the business of deferred deposit lending, submit an operations statement containing the information described in Subsection (2)(e).

(d) A registration or renewal statement shall state:

(i) the name of the person;

(ii) the name in which the business will be transacted if different from that required in Subsection (2)(d)(i);

(iii) the address of the person's principal business office, which may be outside this state;

(iv) the addresses of all offices in this state at which the person conducts the business of:

(A) cashing checks; or

(B) deferred deposit lending;

(v) if the person conducts the business of cashing checks or the business of deferred deposit lending in this state but does not maintain an office in this state, a brief description of

the manner in which the business is conducted;

(vi) the name and address in this state of a designated agent upon whom service of process may be made;

(vii) disclosure of any injunction, judgment, administrative order, or conviction of any crime involving moral turpitude with respect to that person or any officer, director, manager, operator, or principal of that person; and

(viii) any other information required by the rules of the department.

(e) An operations statement required for a deferred deposit lender to renew a registration shall state for the immediately preceding calendar year:

(i) the average deferred deposit loan amount that the deferred deposit lender extended;

(ii) the average number of days a deferred deposit loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;

(iii) of the deferred deposit loans that are paid in full 10 weeks or sooner after the day on which the deferred deposit loan is executed, the average number of days a deferred deposit loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;

~~[(iii)]~~ (iv) the minimum and maximum amount of interest or fees charged by the deferred deposit lender for a deferred deposit loan:

(A) of \$100; and

(B) extended for one week; ~~[and]~~

~~[(iv)]~~ (v) the total number of deferred deposit loans rescinded by the deferred deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b)[-];

(vi) the percentage of deferred deposit loans extended by the deferred deposit lender that are not paid in full by 10 weeks after the day on which the deferred deposit loan is executed; and

(vii) of the persons to whom the deferred deposit lender extended a deferred deposit loan, the percentage that entered into an extended payment plan under Section 7-23-403.

(3) Information provided by a deferred deposit lender under Subsection (2)(e) is:

(a) confidential in accordance with Section 7-1-802; and

(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(4) (a) The commissioner may impose an administrative fine determined under

95 Subsection (4)(b) on a person if:

96 (i) the person is required to be registered under this chapter;

97 (ii) the person fails to register or renew a registration in accordance with this chapter;

98 (iii) the department notifies the person that the person is in violation of this chapter for
99 failure to be registered; and

100 (iv) the person fails to register within 30 days after the day on which the person
101 receives the notice described in Subsection (4)(a)(iii).

102 (b) Subject to Subsection (4)(c), the administrative fine imposed under this section is:

103 (i) \$500 if the person:

104 (A) has no office in this state at which the person conducts the business of:

105 (I) cashing checks; or

106 (II) deferred deposit lending; or

107 (B) has one office in this state at which the person conducts the business of:

108 (I) cashing checks; or

109 (II) deferred deposit lending; or

110 (ii) if the person has two or more offices in this state at which the person conducts the
111 business of cashing checks or the business of deferred deposit lending, \$500 for each office at
112 which the person conducts the business of:

113 (A) cashing checks; or

114 (B) deferred deposit lending.

115 (c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if
116 the person shows good cause.

117 (5) If the information in a registration, renewal, or operations statement required under
118 Subsection (2) becomes inaccurate after filing, a person is not required to notify the department
119 until:

120 (a) that person is required to renew the registration; or

121 (b) the department specifically requests earlier notification.

122 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
123 department may make rules consistent with this section providing for:

124 (a) the form, content, and filing of a registration and renewal statement described in

125 Subsection (2)(d); and

(b) the form and filing of an operations statement described in Subsection (2)(e).

Section 2. Section **7-23-401** is amended to read:

7-23-401. Operational requirements for deferred deposit loans.

(1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit lender shall:

(a) post in a conspicuous location on its premises that can be viewed by a person seeking a deferred deposit loan:

(i) a complete schedule of any interest or fees charged for a deferred deposit loan that states the interest and fees using dollar amounts;

(ii) a number the person can call to make a complaint to the department regarding the deferred deposit loan; and

(iii) a list of states where the deferred deposit lender is registered or authorized to offer deferred deposit loans through the Internet or other electronic means;

(b) enter into a written contract for the deferred deposit loan;

(c) conspicuously disclose in the written contract:

(i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;

(ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;

(iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;

(iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than ~~[12]~~ 10 weeks after the day on which the deferred deposit loan is executed; ~~[and]~~

(v) (A) the name and address of a designated agent required to be provided the department under Subsection 7-23-201(2)(d)(vi); and

(B) a statement that service of process may be made to the designated agent;

157 (d) provide the person seeking the deferred deposit loan;

158 (i) a copy of the [~~deferred deposit contract;~~] written contract described in Subsection

159 (1)(c); and

160 (ii) written notice that if the person seeking the deferred deposit loan is eligible to enter

161 into an extended payment plan, the deferred deposit lender provides an extended payment plan

162 described in Section 7-23-403; and

163 (e) orally review with the person seeking the deferred deposit loan the terms of the

164 deferred deposit loan including:

165 (i) the amount of any interest rate or fee;

166 (ii) the date on which the full amount of the deferred deposit loan is due;

167 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make

168 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit

169 loan without incurring additional charges above the charges provided in the written contract;

170 (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may

171 rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring

172 any charges;

173 (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over

174 without the person receiving the deferred deposit loan requesting the rollover of the deferred

175 deposit loan; and

176 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the

177 rollover requires the person to pay the amount owed by the person under the deferred deposit

178 loan in whole or in part more than [~~12~~] 10 weeks after the day on which the deferred deposit

179 loan is executed; and

180 (f) comply with the following as in effect on the date the deferred deposit loan is

181 extended:

182 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal

183 regulations;

184 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal

185 regulations;

186 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and

187 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

(iv) Title 70C, Utah Consumer Credit Code.

(2) If a deferred deposit lender extends a deferred deposit loan through the Internet or other electronic means, the deferred deposit lender shall provide the information described in Subsection (1)(a) to the person receiving the deferred deposit loan:

(a) in a conspicuous manner; and

(b) prior to the person entering into the deferred deposit loan.

(3) A deferred deposit lender that engages in a deferred deposit loan shall permit a person receiving a deferred deposit loan to:

(a) make partial payments in increments of at least \$5 on the principal owed on the deferred deposit loan at any time prior to maturity without incurring additional charges above the charges provided in the written contract; and

(b) rescind the deferred deposit loan without incurring any charges by returning the deferred deposit loan amount to the deferred deposit lender on or before 5 p.m. the next business day following the deferred deposit loan transaction.

(4) A deferred deposit lender that engages in a deferred deposit loan may not:

(a) collect additional interest on a deferred deposit loan with an outstanding principal balance [~~12~~] 10 weeks after the day on which the deferred deposit loan is executed;

(b) roll over a deferred deposit loan without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;

(c) roll over a deferred deposit loan if the rollover requires a person to pay the amount owed by the person under a deferred deposit loan in whole or in part more than [~~12~~] 10 weeks from the day on which the deferred deposit loan is first executed;

(d) extend a new deferred deposit loan to a person on the same business day that the person makes a payment on another deferred deposit loan if the payment:

(i) is made at least [~~12~~] 10 weeks after the day on which that deferred deposit loan is extended; and

(ii) results in the principal of that deferred deposit loan being paid in full; [~~or~~]

(e) threaten to use or use the criminal process in any state to collect on the deferred deposit loan[~~;~~]; or

(f) in connection with the collection of money owed on a deferred deposit loan, communicate with a person who owes money on a deferred deposit loan at the person's place of

employment if the person or the person's employer communicates, orally or in writing, to the deferred deposit lender that the person's employer prohibits the person from receiving these communications.

(5) Notwithstanding Subsections (4)(a) and (4) (e), a deferred deposit lender that is the holder of a check used to obtain a deferred deposit loan that is dishonored may use the remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that the issuer, as defined in Section 7-15-1, of the check may not be:

(a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a condition of the holder not filing a civil action; or

(b) held liable for the damages described in Subsection 7-15-1(7)(b)(vi).

Section 3. Section ~~7-23-403~~ is enacted to read:

7-23-403. Extended payment plan.

(1) (a) If a person who owes money on a deferred deposit loan requests to enter into an extended payment plan, the deferred deposit lender who extended the deferred deposit loan shall allow the person to enter into an extended payment plan that meets the requirements of this section at least once during a 12-month period to pay the money owed.

(b) A deferred deposit lender is not required to enter into an extended payment plan with a person who owes money on a deferred deposit loan more than one time during a 12-month period.

(2) An extended payment plan shall include the following:

(a) A deferred deposit lender shall require a person who receives a deferred deposit loan and wants to enter an extended payment plan to enter into a written agreement:

(i) with the deferred deposit lender;

(ii) by no later than the end of the deferred deposit lender's business day before the day on which the deferred deposit loan is due; and

(iii) that states:

(A) a payment schedule; and

(B) the money owed under the extended payment plan.

(b) A payment schedule for an extended payment plan shall provide that the money owed may be paid:

(i) in at least four equal payments; and

(ii) over a time period that is at least 60 days.

(c) The money owed under an extended payment plan shall equal the money owed under the deferred deposit loan, including interest and fees, on the date the written agreement for the extended payment plan is executed.

(3) A deferred deposit lender may not charge interest or fee as part of an extended payment plan, except that if the person who receives the deferred deposit loan defaults under the extended payment plan, the deferred deposit lender may:

(a) accelerate the requirement to pay of the money owed under the extended payment plan;

(b) charge a fee not to exceed \$20;

(c) terminate the extended payment plan; and

(d) subject to the other requirements of this chapter, reinstate the original deferred deposit loan terms.

(4) A deferred deposit loan may not penalize a person who enters into an extended payment plan for paying to the deferred deposit lender money owed under the extended payment plan before the money is due.

(5) A deferred deposit lender may not initiate collection activities for a deferred deposit loan that is subject to an extended payment plan during the period that the person owing money under the extended payment plan is in compliance with the extended payment plan.

Section 4. Section **15-1-4** is amended to read:

15-1-4. Interest on judgments.

(1) As used in this section, "federal postjudgment interest rate" means the interest rate established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

(2) (a) Except as provided in Subsection (2)(b), a judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment.

(b) A judgment rendered on a deferred deposit loan subject to Title 7, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act, shall bear interest at the rate imposed under Subsection (3) on an amount not exceeding the sum of:

(i) the total of the principal balance of the deferred deposit loan;

(ii) interest at the rate imposed by the deferred deposit loan agreement for a period not

281 exceeding ~~[12]~~ 10 weeks as provided in Subsection 7-23-401(4);

282 (iii) costs;

283 (iv) attorney fees; and

284 (v) other amounts allowed by law and ordered by the court.

285 (3) (a) Except as otherwise provided by law, other civil and criminal judgments of the
286 district court and justice court shall bear interest at the federal postjudgment interest rate as of
287 January 1 of each year, plus 2%.

288 (b) The postjudgment interest rate in effect at the time of the judgment shall remain the
289 interest rate for the duration of the judgment.

290 (c) The interest on criminal judgments shall be calculated on the total amount of the
291 judgment.

292 (d) Interest paid on state revenue shall be deposited in accordance with Section
293 63A-8-301.

294 (e) Interest paid on revenue to a county or municipality shall be paid to the general
295 fund of the county or municipality.